



House of Representatives

General Assembly

File No. 275

February Session, 2010

Substitute House Bill No. 5308

House of Representatives, April 1, 2010

The Committee on Insurance and Real Estate reported through REP. FONTANA, S. of the 87th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT ESTABLISHING A NONPROFIT WORKERS' COMPENSATION INSURANCE COMPANY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2010*) (a) As used in this section:
- 2 (1) "Board" means the board of directors established under
- 3 subsection (c) of this section;
- 4 (2) "Chief executive officer" means the chief executive officer of the
- 5 nonprofit legal entity established under subsection (b) of this section;
- 6 and
- 7 (3) "Workers' compensation insurance company" or "company"
- 8 means the nonprofit legal entity established under subsection (b) of
- 9 this section.
- 10 (b) (1) There is established a workers' compensation insurance
- 11 company, which shall be a nonprofit legal entity, to provide and

12 administer workers' compensation insurance to employers in this state
13 against liabilities arising under chapter 568 of the general statutes.

14 (2) Such company shall be organized and operated as a domestic
15 mutual insurance company and shall be subject to the provisions of
16 title 38a of the general statutes, except as otherwise provided in this
17 section.

18 (3) Such company shall not be deemed to be a state agency for any
19 purpose, nor shall such company's employees be considered state
20 employees.

21 (c) (1) The powers of the workers' compensation insurance company
22 shall be vested in a board of directors consisting of seven members as
23 follows, and the Labor Commissioner and the chief executive officer,
24 who shall be ex-officio members:

25 (A) Three members appointed by the Governor;

26 (B) One member appointed by the speaker of the House of
27 Representatives;

28 (C) One member appointed by the president pro tempore of the
29 Senate;

30 (D) One member appointed by the minority leader of the House of
31 Representatives; and

32 (E) One member appointed by the minority leader of the Senate.

33 (2) All members, except for the Labor Commissioner and the chief
34 executive officer, shall be workers' compensation insurance
35 policyholders or officers or employees of such policyholders. At least
36 three of the members shall be representatives of for-profit entities.

37 (3) No member, other than the Labor Commissioner and the chief
38 executive officer, shall be an elected or appointed official of the state or
39 a municipality of the state or an employee or representative of the
40 insurance industry.

41 (4) The members appointed under subdivision (1) of this subsection
42 shall serve for terms of four years, except the members appointed
43 under subparagraphs (B) to (E), inclusive, of said subdivision (1) shall
44 be elected by the workers' compensation insurance company's
45 policyholders after the initial term, pursuant to procedures established
46 by the board. Members may be reappointed or elected to serve
47 consecutive terms. Any vacancy occurring during the term of a
48 member shall be filled as provided in the workers' compensation
49 insurance company's bylaws. Members shall serve without
50 compensation for their services but shall be reimbursed for their
51 expenses.

52 (5) The board shall annually elect a chairperson and any other
53 officers it deems necessary for the performance of its duties.

54 (6) The members of the board shall be appointed not later than
55 September 1, 2010, and the board shall organize as soon as is
56 practicable after such appointments.

57 (7) The board may:

58 (A) Sue and be sued;

59 (B) Have a seal and alter it at will;

60 (C) Make, amend and repeal bylaws, procedures and rules relating
61 to the conduct of the business of the workers' compensation insurance
62 company and as required by the provisions of this section;

63 (D) Enter into contractual agreements for the administration of the
64 workers' compensation insurance company;

65 (E) Rent, lease, buy or sell real or personal property in the workers'
66 compensation insurance company's name and construct or repair
67 buildings necessary to provide space for the board's operations;

68 (F) Declare dividends to the workers' compensation insurance
69 company policyholders when there is an excess of assets over

70 liabilities;

71 (G) Establish accounts in a state or federally-chartered financial
72 institution whose deposits are insured by the Federal Deposit
73 Insurance Corporation. All premiums paid by policyholders and any
74 other moneys paid to the workers' compensation insurance company
75 shall be deposited in such accounts;

76 (H) Pay medical expenses, rehabilitation expenses and
77 compensation due to claimants of policyholders;

78 (I) Hire staff, set and pay salaries and compensation and pay
79 administrative and other expenses of the workers' compensation
80 insurance company; and

81 (J) Perform all other functions and exercise all other powers of a
82 domestic mutual insurance company that are necessary, appropriate or
83 convenient to administer the accounts established pursuant to
84 subparagraph (G) of this subdivision or to carry out the provisions of
85 this section.

86 (8) (A) The board shall employ a chief executive officer of the
87 workers' compensation insurance company not later than January 1,
88 2011, who shall have oversight of the daily activities of said company.
89 The chief executive officer shall serve at the pleasure of the board.

90 (B) Subject to the authority of the board and the provisions of this
91 section, said officer shall perform the duties of chief executive officer
92 as provided in the company's bylaws or determined by resolution of
93 the board. In addition, the chief executive officer shall:

94 (i) Make safety inspections of risks and furnish advisory services on
95 safety and health measures to policyholders;

96 (ii) Collect and disburse moneys necessary to administer the
97 accounts established pursuant to subparagraph (G) of subdivision (7)
98 of this subsection and to conduct the business of the company;

99 (iii) Create an abstract summary of any audit or survey conducted
100 by the company; and

101 (iv) Perform all other acts necessary to exercise the powers,
102 authority or jurisdiction of the company, including, but not limited to,
103 the establishment of premium rates. Subject to the approval of the
104 board, the chief executive officer may delegate any duties on behalf of
105 the company to qualified officers or employees of the company, and
106 may contract with qualified independent contractors to perform such
107 duties for the company.

108 (d) No member of the board or officer or employee of the workers'
109 compensation insurance company shall be personally liable, jointly or
110 severally, for any debt or obligation created or incurred by said
111 company.

112 (e) (1) The workers' compensation insurance company shall be
113 deemed to have met the minimum surplus requirement set forth in
114 section 38a-72 of the general statutes when the sum specified under
115 section 2 of this act has been transferred to the Labor Department.

116 (2) The workers' compensation insurance company may insure an
117 employer against workers' compensation liabilities arising under
118 chapter 568 of the general statutes, including excess and residual risk
119 workers' compensation insurance.

120 (3) Employers may apply for coverage to the workers' compensation
121 insurance company through an insurance producer licensed in this
122 state according to the procedures or rules established by the board
123 pursuant to subsection (c) of this section. The board shall establish a
124 schedule of commissions paid to insurance producers for voluntary
125 and residual risk workers' compensation insurance policies written or
126 sold by such producers.

127 (4) The board may deny an application for workers' compensation
128 insurance coverage, refuse to renew coverage or cancel coverage, as
129 appropriate, for any of the following:

130 (A) Nonpayment of any premium for current or prior policies
131 issued by the workers' compensation insurance company to a
132 policyholder or to another entity the board deems to be a successor in
133 interest of such policyholder;

134 (B) Failure or refusal by an applicant or policyholder to fully and
135 accurately disclose to the company information concerning such
136 applicant's or policyholder's ownership, change of ownership,
137 operations or payroll, including allocation of payroll among state and
138 federal compensation programs, classification of payroll or any other
139 information determined to be necessary by the board to determine
140 appropriate rates; or

141 (C) Failure or refusal by an applicant or policyholder to comply
142 with the board's safety requirements or to permit premises inspections
143 to the satisfaction of the board.

144 (5) Any determination by the board with respect to the denial,
145 nonrenewal or cancellation of a workers' compensation insurance
146 policy under this subsection, except for cancellation for nonpayment of
147 premium, may be appealed to the Insurance Commissioner, in writing,
148 not later than thirty days after notice by the board to the applicant or
149 policyholder of such action. If said commissioner determines that the
150 board has unreasonably denied, failed to renew or cancelled any
151 insurance policy for a residual risk, the board shall in good faith
152 reconsider issuing, renewing or reinstating such insurance policy. If
153 the board has not issued, renewed or reinstated such insurance policy
154 within thirty days after the commissioner's determination, the
155 applicant or policyholder may appeal the denial, failure to renew or
156 cancellation by the board to the superior court for the judicial district
157 of Hartford.

158 (f) Not later than January 1, 2012, and annually thereafter until the
159 board has completed all repayments required under section 2 of this
160 act, the board shall submit a report, in accordance with the provisions
161 of section 11-4a of the general statutes, to the Governor and the joint
162 standing committee of the General Assembly having cognizance of

163 matters relating to workers' compensation, on the business transacted
 164 by the workers' compensation insurance company in the prior calendar
 165 year. Such report shall include, but not be limited to, a statement of the
 166 assets and liabilities of the company and a summary of the repayments
 167 made to date pursuant to section 2 of this act.

168 Sec. 2. (NEW) (*Effective July 1, 2010*) (a) Notwithstanding the
 169 provisions of chapter 66 of the general statutes, the Treasurer shall
 170 transfer to the Labor Department, for the fiscal year ending June 30,
 171 2011, the sum of five million dollars from the State Employees
 172 Retirement Fund, for the workers' compensation insurance company
 173 established under section 1 of this act.

174 (b) Such sum shall not be transferred until the Treasurer and the
 175 State Employees' Bargaining Agent Coalition have provided written
 176 consent to the clerks of both houses of the General Assembly to such
 177 transfer.

178 (c) The board established under subsection (c) of section 1 of this act
 179 shall repay to the Treasurer the sum transferred pursuant to this
 180 section plus interest at a rate determined by the Treasurer, over a
 181 period not to exceed five years from the date the board receives such
 182 sum. The Treasurer shall deposit any repayment amounts received
 183 pursuant to this subsection in the State Employees Retirement Fund.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	New section
Sec. 2	<i>July 1, 2010</i>	New section

Statement of Legislative Commissioners:

In section 1(e)(5), before "to the superior court", "program" was changed to "board" for internal consistency.

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
State Employees Retirement System Fund	SERS Fund - Cost	Potential	Potential

Municipal Impact: None

Explanation

Assuming approval by both parties, there is a potential loss to the SERS Fund to the extent that 1) the loan is not repaid in its entirety; and 2) the interest repaid is lower than the interest that would have been earned over the course of the loan.

The nonprofit insurance company is created by the bill through a transfer of \$5 million from the State Employees Retirement System (SERS) Fund to the Department of Labor. This transfer would require written consent from both the State Employees' Bargaining Agent Coalition (SEBAC) and the State Treasurer. The \$5 million would have to be paid back to the SERS Fund within five years at an interest rate determined by the Treasurer.

The bill makes the Labor Commissioner an ex-officio member of the workers' compensation insurance company established in the bill. This does not result in any cost to the Department of Labor.

The Out Years

The annualized ongoing fiscal impact identified above would continue until loan repayment.

OLR Bill Analysis**sHB 5308*****AN ACT ESTABLISHING A NONPROFIT WORKERS' COMPENSATION INSURANCE COMPANY.*****SUMMARY:**

This bill establishes a nonprofit workers' compensation insurance company to provide and administer workers compensation benefits to Connecticut employers. The company must be organized and operated as a domestic mutual insurance company. (A mutual insurance company does not have shareholders, but instead is owned by its policyholders.)

The bill establishes a board of directors for the company and enumerates the board's powers and duties. Among other things, the board must hire a chief executive officer (CEO) by January 1, 2011 to oversee the company's daily operations.

The bill requires the state treasurer to transfer \$5 million from the State Employees Retirement Fund to the Labor Department for the creation of the company. But the treasurer cannot transfer any funds until she and the State Employees' Bargaining Agent Coalition (SEBAC) give their written consent to the House and Senate clerks. (The written consent presumably goes to the clerks for legislative action. By law, if the legislature does not take action on a SEBAC agreement within 30 days, the agreement is deemed approved (CGS § 5-278(b)).

The bill requires the board to repay the treasurer the \$5 million plus interest at a rate the treasurer determines within five years. The treasurer must deposit the repayment in the retirement fund.

EFFECTIVE DATE: July 1, 2010

WORKERS' COMPENSATION INSURANCE COMPANY

Under the bill, the company is subject to the insurance laws of Connecticut, except as otherwise specified. The company must not be deemed to be a state agency and its employees are not to be considered state employees.

The bill permits the company to insure employers against workers' compensation liabilities, including excess and residual insurance.

Minimum Surplus Requirements

By law, a mutual insurance company cannot be licensed to operate in Connecticut unless it complies with minimum surplus requirements specified in law. A mutual workers' compensation company must have and maintain \$1,000,000 minimum surplus (CGS § 38a-72).

The bill specifies that the company will have met its minimum surplus requirements when it has received the \$5 million transfer from the treasurer.

BOARD OF DIRECTORS

Board Members

The bill vests the powers of the workers' compensation insurance company in a nine-member board of directors. The labor commissioner and the CEO are ex-officio members. The governor appoints three of the remaining seven members. The House speaker, Senate president pro tempore, House minority leader, and Senate minority leader each appoint one member to an initial term. Members must be appointed by September 1, 2010 and the board must organize as soon as practicable after the appointments are made.

The seven appointed members must be workers' compensation policyholders or their officers or employees. At least three must represent for-profit entities. None of the seven can be an (1) elected or appointed state or municipal official or (2) insurance industry employee or representative.

Appointed members serve four year terms. Members may be reappointed or elected to serve consecutive terms; however, the four initial legislative appointees serve one term. Thereafter, the workers' compensation insurance company's policyholders elect them. Vacancies must be filled as specified in the company's bylaws. Members serve without compensation but must be reimbursed for their expenses.

The board must annually elect a chairperson and other officers it deems necessary.

Board Powers and Duties

Under the bill, the board may:

1. sue and be sued;
2. have a seal and alter it at will;
3. make, amend, and repeal bylaws, procedures, and rules relating to the company's business conduct;
4. enter into contractual agreements for the company's administration;
5. rent, lease, buy, or sell real or personal property in the company's name and construct or repair buildings to provide space for the board's operations;
6. declare dividends to the company's policyholders when assets exceed liabilities;
7. establish accounts in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation, into which all premiums and other moneys paid to the company must be deposited;
8. pay medical expenses, rehabilitation expenses, and compensation due to claimants;

9. hire staff, set and pay salaries and compensation, and pay administrative and other company expenses; and
10. perform all other functions and exercise all other powers of a domestic mutual insurance company that are necessary, appropriate, or convenient to administer the bank accounts or carry out the board's functions.

Chief Executive Officer

The bill requires the board to hire a CEO to oversee the company's daily activities by January 1, 2011. The CEO serves at the pleasure of the board and must perform his or her duties as provided in the company's bylaws or determined by board resolution. The CEO must:

1. make safety inspections of risks and furnish advisory services on safety and health measures to policyholders;
2. collect and disburse money needed to administer the bank accounts and conduct the company's business;
3. create an abstract summary of any audit or survey the company conducts; and
4. perform all other acts necessary to exercise the company's powers, authority, or jurisdiction, including setting premium rates.

Subject to the board's approval, the CEO may delegate any of his or her duties to qualified company officers or employees or contract them out to qualified independent contractors.

Immunity

Under the bill, a company board member, officer, or employee is not personally liable, jointly or severally, for any debt or obligation the company incurs or creates.

INSURANCE PRODUCERS AND COMMISSIONS

The bill permits employers to apply to the company for coverage

through a Connecticut-licensed insurance producer. The board must establish a commission schedule for voluntary and residual risk insurance policies producers write or sell.

DENIAL, NONRENEWAL, OR CANCELLATION OF COVERAGE

The board may deny an application for workers' compensation insurance coverage, refuse to renew coverage, or cancel coverage for:

1. nonpayment of a company premium by a policyholder or successor in interest for current or prior policies;
2. failure or refusal by an applicant or policyholder to fully and accurately disclose to the company information concerning the applicant's or policyholder's ownership, change of ownership, operations, payroll, or any other information the board determines necessary to set appropriate rates; or
3. failure or refusal by an applicant or policyholder to comply with the board's safety requirements or to permit premises inspections to the board's satisfaction.

Appeal Rights

An applicant or policyholder may appeal to the insurance commissioner a board decision to deny, not renew, or cancel a workers' compensation insurance policy, except a decision to cancel for nonpayment of premium. The appeal must be in writing and filed within 30 days after the board notifies the applicant or policyholder of the action.

If the commissioner determines that the board has unreasonably denied, failed to renew, or cancelled an insurance policy for a residual risk, the board must in good faith reconsider issuing, renewing, or reinstating the insurance policy. If the board has not issued, renewed, or reinstated the insurance policy within 30 days after the commissioner's determination, the applicant or policyholder may appeal the denial, failure to renew, or cancellation to the Hartford Superior Court.

REPORTING REQUIREMENT

Beginning January 1, 2012 and annually thereafter until the \$5 million debt is repaid, the bill requires the board to report to the governor and the Labor Committee on the business it transacted in the prior calendar year. The report must include a statement of the company's assets and liabilities and a summary of repayments made against the \$5 million funding.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 13 Nay 6 (03/16/2010)